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OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Guidance on Implementation of the Recent Employee Commute Options Legislation

FROM: Margo T. Oge, Director
Office of Mobile Sources

TO: Air Division Directors, Regions 1-10

This memorandum provides the Environmental Protection Agency's (EPA's) guidance for implementing the recently-passed legislation amending the Employee Commute Options (ECO) provision of the Clean Air Act [section 182(d)(1)(B)]. The legislation, also known as HR325 or Public Law 104-70, was passed by Congress in December 1995 and signed by the President on December 23, 1995.

This guidance is intended to help states wishing to take advantage of the flexibility provided by the new ECO legislation. The legislation allows states that prior to its enactment were required to implement ECO programs to "remove such provisions from the implementation plan, or withdraw its submission, if the state notifies the Administrator, in writing, that the state has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions." For states with areas classified after the date of the amendment as severe or extreme for ozone nonattainment or serious for carbon monoxide nonattainment, trip reduction programs are now a voluntary option.

This guidance addresses a state's notification to EPA of the state's desire to remove its ECO program from its State Implementation Plan (SIP), the effective date of the removal, possible substitute measures, determination of the alternative measure's equivalence to ECO, and the effect of removing ECO from 15% rate of progress plans and attainment demonstrations.

Removing ECO from SIPs and Withdrawing ECO SIP Submittals

a. Notification

With the new ECO legislation, Congress established a streamlined notification process for a state to remove its ECO program from an approved SIP or withdraw an ECO SIP submittal that has not yet been approved. This process applies only to the ECO program.

Any state wishing to remove its ECO program from an approved SIP or withdraw an ECO SIP submittal that has not yet been approved should send to the appropriate EPA Regional Administrator a letter identifying an alternative measure (or measures) that achieves emission reductions equivalent to those obtained by the state's ECO program. EPA believes that the statute's requirement that a state identify alternative emission reductions in order to remove its ECO program establishes the need for certain elements in a state's letter of notification to EPA. The letter should contain an estimate of the emission reductions that would have resulted from implementation of the ECO program as submitted in the SIP and an explanation of the basis for that estimate. The letter should also contain a description of the substitute measure, an estimate of the substitute measure's emission reductions, and the basis for that estimate.

Under the new ECO legislation, a state is not required to submit a SIP revision in order to remove ECO from an approved SIP submitted to fulfill the specific requirements of section 182(d)(1)(B).

EPA's interpretation of the amended Act is that the state's letter of notification, provided that it identifies alternative measures that achieve equivalent emission reductions, is sufficient to remove ECO from an approved SIP or to withdraw an

ECO SIP submission. The effective date for ECO's removal from a SIP or an ECO SIP's withdrawal would be the date EPA receives the state's notification containing an equivalent alternative. No EPA approval action is necessary. The state's letter will also serve to remove ECO from a 15% rate of progress plan or attainment demonstration.

Since the statute is intended to be emissions neutral by replacing emission reductions from removed ECO programs with reductions from substitute measures, EPA believes that it is appropriate in implementing the Act for the Agency to confirm that the substitute measures identified will in fact achieve equivalent emission reductions. And because identification of an equivalent substitute is necessary in order for a state to remove ECO from a SIP or to withdraw an ECO SIP submittal, EPA will work with the state to identify an acceptable alternative, if the state's initial notification does not satisfy that criteria.

While a state's letter of notification identifying an alternative measure that achieves equivalent emission reductions is enough to remove ECO from an approved SIP and relieve a state of its specific obligations with respect to the ECO requirement, EPA will have to publish a Federal Register Notice to remove the ECO SIP from the Code of Federal Regulations.

b. ECO Substitutes

States have several options for choosing an ECO substitute or substitutes for the purpose of removing their ECO programs from a SIP submittal or an approved SIP. Under the new ECO legislation, equivalent reductions for the purpose of removing ECO programs from SIP submittals may be obtained from measures that are not federally mandated or from surpassing the requirements of federally mandated measures (i.e., by achieving more than federally required emission reductions or by implementing federally required measures at a level beyond federal requirements). These substitutes may be newly identified measures or discretionary measures the state chose to include in its current SIP submittals, such as 15 percent plans or attainment demonstrations.

Mandatory measures are those measures specifically required by the Clean Air Act, either nationally or for the particular area where the measure is being applied. Discretionary measures are those selected by the state of its own accord to reach progress or attainment goals.

c. **Equivalent Reductions**

For the ECO program, it is clear that Congress intended the benchmark for determining emissions equivalence to be the emission reductions obtained from the program as submitted in a SIP to EPA instead of the reductions corresponding to the targeted 25 percent increase in vehicle occupancy contained in the original statute. The 25 percent target is not included in the new legislation.

EPA believes that the state may use its best estimate of trip reductions resulting from implementation of its ECO SIP in calculating the resulting emission reductions. For this purpose, the state may use estimates submitted with its ECO SIP submittal or the credit the state is claiming in its 15% plan or attainment demonstration. The state may also provide revised estimates. States that have no prior SIP estimate of the emission benefits of their ECO programs should develop one and provide the basis for the estimate to EPA in the notification letter.

For calculating the emission reduction benefits of the state's proposed ECO substitute, the state should use existing, applicable EPA guidance or provide adequate support for the use of an alternative calculation methodology.

15% Plans and Attainment Demonstrations

The state's letter of notification identifying an alternative measure that achieves equivalent emission reductions will remove ECO from all SIP submittals, including 15% plans and attainment demonstrations, on the date that it is received by EPA.

However, if a state claimed credit for ECO in its 15% rate of progress plan or its attainment demonstration, ECO's removal

5

will make those plans inadequate, and the state will need to submit a revised plan consistent with existing EPA guidance to correct the deficiency created by ECO's removal. The state's obligation to replace the inadequate plans begins with the removal of ECO, though EPA may issue a SIP call to establish a schedule for the state's revised submittal. If a state's 15% plan or attainment demonstration contains credit for ECO but has not received final EPA approval, the state will have to submit a revised plan to make up the lost emission reductions that were attributed to ECO, before EPA can approve the plan.

Conclusion

While the new ECO legislation provides states with additional flexibility in meeting their air quality goals, states may choose to continue implementing their ECO programs or design other trip reduction strategies to maintain the benefits these programs provide.

I am impressed with the good work that states have done with their ECO programs and believe that the trip-reduction foundation they have laid will serve them well into the future, through emission reductions, reduced traffic congestion, and increased availability of transportation alternatives. These state programs have also provided the benefits of increased employer participation in regional transportation planning.

The staff in the Office of Mobile Sources and I pledge our continued assistance to your offices and to states and localities that choose to develop and implement trip reduction programs in their areas.